



## ISSUE 5

*News Briefs*

*December, 2004*

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### 1. **Purpose of Reclamation Newsletter**

This newsletter is intended to facilitate communication to support and enhance the NR 135 program. It will address implementation issues important to maintaining the balance between statewide consistency and appropriate flexibility/discretion. Another function of the newsletter is to fill the on-going need to keep everyone posted on upcoming fee and reporting deadlines, training opportunities, conferences, Nonmetallic Mining Advisory Committee meetings and other announcements. Publication will be on an as needed basis.

### 2. **Now is a Good Time for NR 135 RAs to Reassess Annual Reclamation Fees and Establish a Plan Review Fee**

Today, we are nearing the goal of having reclamation plans approved by the County or Local Regulatory Authority (RA) and financial assurance in place for all active nonmetallic mining operations. (See summary of Plan Review Status Survey in this issue).

As a result, the higher fees intended to spread out the cost of plan review for existing mines will be a thing of the past. This article is intended to encourage RAs to reexamine annual fees to ensure they reflect current program administration costs.

In the long-term program, annual reclamation fees should **not** include reclamation plan review costs.

Instead, we suggest that this is also a good time to separate annual reclamation fees from one-time plan review fees. We encourage you to use your recent

**For more information: Please see  
PUB-WA-832 2001**

*"ESTIMATING ACREAGE FEES TO  
SUPPORT  
A NONMETALLIC MINING RECLAMATION  
PROGRAM "*

experience as a sound basis to determine the amount for annual fees and to establish a separate reclamation plan review fee for new applications. You may wish to consider an approach similar to that modeled in NR 135.39 (Table 4). In conclusion, it is recommended that all RAs reevaluate their costs and revenues in order to determine what changes, if any, to the annual fees on unreclaimed acres are necessary and to initiate needed changes.

### 3. [How to Prepare for a Nonmetallic Mining Audit](#) [Jessica Maloney](#)

Audits are a statutory requirement to ensure that reclamation programs statewide are being conducted, and operator reclamation activities are carried out in compliance with NR 135 and so to ensure compliance with the statewide uniform reclamation standards. Audits give DNR important feedback needed to keep the statewide program running smoothly, effectively and in compliance. Besides gathering quality assurance information and the audit is intended to assist you and to answer any program implementation questions you might have.

This "brief" and accompanying detailed article are intended to assist you in preparing for an NR 135 Reclamation Program audit and to ensure that you get the most out of the audit process. Basically there are two main items the audit will focus on, 1) an office review of paperwork with a discussion of the program and 2) site visits. When a DNR representative calls to schedule the time and date you will need to agree on the amount of time to allocate for the audit. Besides scheduling, preparing ahead of time is the key ingredient in an effective and mutually satisfactory audit process. Towards this end the DNR will send you a packet of materials including: a **"Pre-Audit Questionnaire"** and a **checklist**. The Pre-Audit Questionnaire is a form that poses questions for you to answer before the auditor arrives. Its purpose is to help you get all of the relevant documents together and gives the auditor a feel for how your program works. The checklist is the form that will be completed by the DNR during the audit and used as a record of the visit.

Overall, the audit process is used as a tool for ensuring that the nonmetallic mining program is being run as consistently as possible throughout the state. DNR's goal is to help you run an effective program within the boundaries of the law. To get the most out of the time spent on the audit it is a good idea for you to become familiar with the above materials, answer pre-audit questions, prepare any documents that are needed for review and finally to put together a list of questions and other topics you wish to address.

### **4. Results of DNR Survey: Status of Regulatory Authority (RA) Reclamation Plan Review and Approval**

We are at a key juncture in the still-maturing NR 135 Nonmetallic Mining Reclamation Program. That being the case, the DNR survey was conducted to gain the best information available on the status of reclamation plan approvals. You will recall, that to comply with NR 135.21 most regulatory authorities should have received all reclamation plans from "automatic permit holders" no later than September 30, 2004. Except where

an extension was granted or a public hearing was held, the reclamation plans submitted by operators should have received approval from RAs by October 30, 2004.

The DNR expresses its appreciation to those RAs that responded to the survey. Although not all RAs responded we have gathered much valuable data on the approval status of reclamation plans.

## **SURVEY RESULTS**

There are 96 RA's that have reclamation programs of some kind. Some of these are really holding patterns often just in case an operation wishes to pursue a permit. Of the total number of RAs there are some 77 that are considered "significant" and represent about 99% of the total of nonmetallic mines that are being operated.

The survey response rate for these 77 RAs considered significant was 78%. Thus, it should be noted there is a gap in our knowledge. This gap represents the fact that 22% of significant RAs did not respond. Together, the non-responding jurisdictions contain about 26% of the existing mines. Still, this survey has provided a good data set that contains current information for approximately 3/4 of the RAs and the total mines in the state.

Based on results of our recent survey and DNR files there are approximately 2300 nonmetallic mining operations in the state. Of these about 1,400 have received approvals of their reclamation plans. To date, approximately 1200 reclamation plans have been approved in satisfaction of the conditions of "automatic" reclamation permits issued and received in 2001. For that group of approved reclamation plans about 75% have financial assurance in place. In addition, about 200 new reclamation permits have been issued. Another 320 reclamation plans submitted as per requirements of the "automatic" permit have received extensions or are still under review. That leaves about 580 mines of unknown approval status in the jurisdictions that did not respond to the DNR Survey. Again, for those the neither the approval status or FA status known.

Based on the above data one may conclude:

On the plus side: 1) the majority of nonmetallic mines now have approved reclamation plans. For that group most either have financial assurance in place or have a negotiated deadline to provide it; 2) the majority (75%) of both RAs (jurisdictions) and operating mines are either in full compliance with state law and NR 135 program requirements or are in a good position to achieve compliance in the near future.

On the minus side: 1) there are still a number of mines that are operating without an approved reclamation plan and so not in compliance with their conditional automatic reclamation permit; 2) there are RAs who are not performing in a way that meets the state law nor ensures a level playing field for their operators.

## 5. Request for feedback on current approach to Financial Assurance (FA) and suggested changes.

Those of you who attended the November 10 Roundtable in Stevens Point heard a fair bit of discussion on FA. You received relevant materials in your packet. The FA matter will be discussed at the January 27, 2005 NMAC meeting. It is likely that we will see proposed changes to FA in the next legislative session. Your input is needed so we can better prepare and have access to the best information possible. Please respond, as time and interest allows, to the following questions:

- ▶ How is FA working or not working in your jurisdiction?
- ▶ Do you have any thoughts on the FA material you received in your packet at the Roundtable?
- ▶ Do you have suggestions on ways to make it work better? Any input you might have will be appreciated - any general comments are welcome as well.

Please take a moment and send me any feedback you have on this.

[Thomas.Portle@dnr.state.wi.us](mailto:Thomas.Portle@dnr.state.wi.us)). If you need materials go let me know or go to the Alaska website [http://www.dnr.state.ak.us/mlw/mining/2004Reg\\_book.pdf](http://www.dnr.state.ak.us/mlw/mining/2004Reg_book.pdf)

## 6. Announcements/ "Heads-up" - *Important Dates*:

- Annual Reclamation Fees due to RAs **December 31, 2004**
- NMAC meeting to be held on **January 27, 2005**.
- Annual Reclamation Fees due to DNR **March 31, 2005**
- Program Review Audits to be scheduled

## 7. More Information:

Part of the Department's mandate is to provide technical assistance to support the county and municipal nonmetallic mining reclamation programs, and to address the needs of mine operators. Informational materials can be found at the Department's Nonmetallic Mining Web site, and are described in detail below:

<http://www.dnr.state.wi.us/org/aw/wm/mining/nonmetallic/index.htm>.

- Program Summary, DNR contact information, and regulations
- Nonmetallic Mining Advisory Committee
  - Meeting date, location, and tentative agenda, Previous meeting minutes
  - Contact information
- Developing **Reclamation Plans**
- Preparing and reviewing **Financial Assurance**

- Frequently Asked Questions
- Publications & Registration Form For Land Containing Nonmetallic Mineral Deposits (see below)

### **Obtain Registration Form for Land Containing a Nonmetallic Mineral Deposit**

A voluntary form that may be used by landowners who wish to register the land containing a nonmetallic mineral deposit is **available on the nonmetallic mining reclamation web page**.

The registration form

<http://www.dnr.state.wi.us/org/aw/wm/publications/mining/Registration-Form.pdf> and instructions

<http://www.dnr.state.wi.us/org/aw/wm/publications/mining/Registration-Instructions.pdf> are provided for your convenience.

- 8. Suggestion Box:** We welcome your ideas, questions and involvement. Please submit ideas topics for articles, issues you would like to see addressed, regular features that ought to be in the newsletter, announcements of any meetings you'd about which you'd like to notify the NR 135 population. Responses can be emailed to Tom Portle (email: [Thomas.Portle@dnr.state.wi.us](mailto:Thomas.Portle@dnr.state.wi.us)).

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### **2. Now is a Good Time for NR 135 RAs to Reassess Annual Reclamation Fees and Establish a Plan Review Fee**

This article is intended to encourage RAs to revisit annual reclamation fees to ensure that they are both accurate and fair. Annual Reclamation Fees are assessed on unreclaimed acres of active mining operations. These fees support the NR 135-reclamation program and are required by state law and administrative code. Chapter NR 135, Wis. Adm. Code, provides that costs incurred by state, county or municipal regulatory authorities (RAs) in administering the reclamation program.

Initially, those mining operations that were active in 2001 were granted automatic reclamation permits in accordance with ch. NR 135.21(1), Wis. Adm. Code. As a condition of the automatic reclamation permit, mine operators agreed to submit a complete reclamation plan for their site(s) within two to three years. Many of you will recall that initially, so as to minimize the burden on operators of existing mines, it was decided that costs associated with the review of reclamation plans be spread out over the initial phase of program implementation and collected along with annual reclamation fees in a manner similar to that in NR 135.39 (Table 2). In the long-term, a separate reclamation plan review fee may be assessed (similar to NR 135.39 (Table 4)).

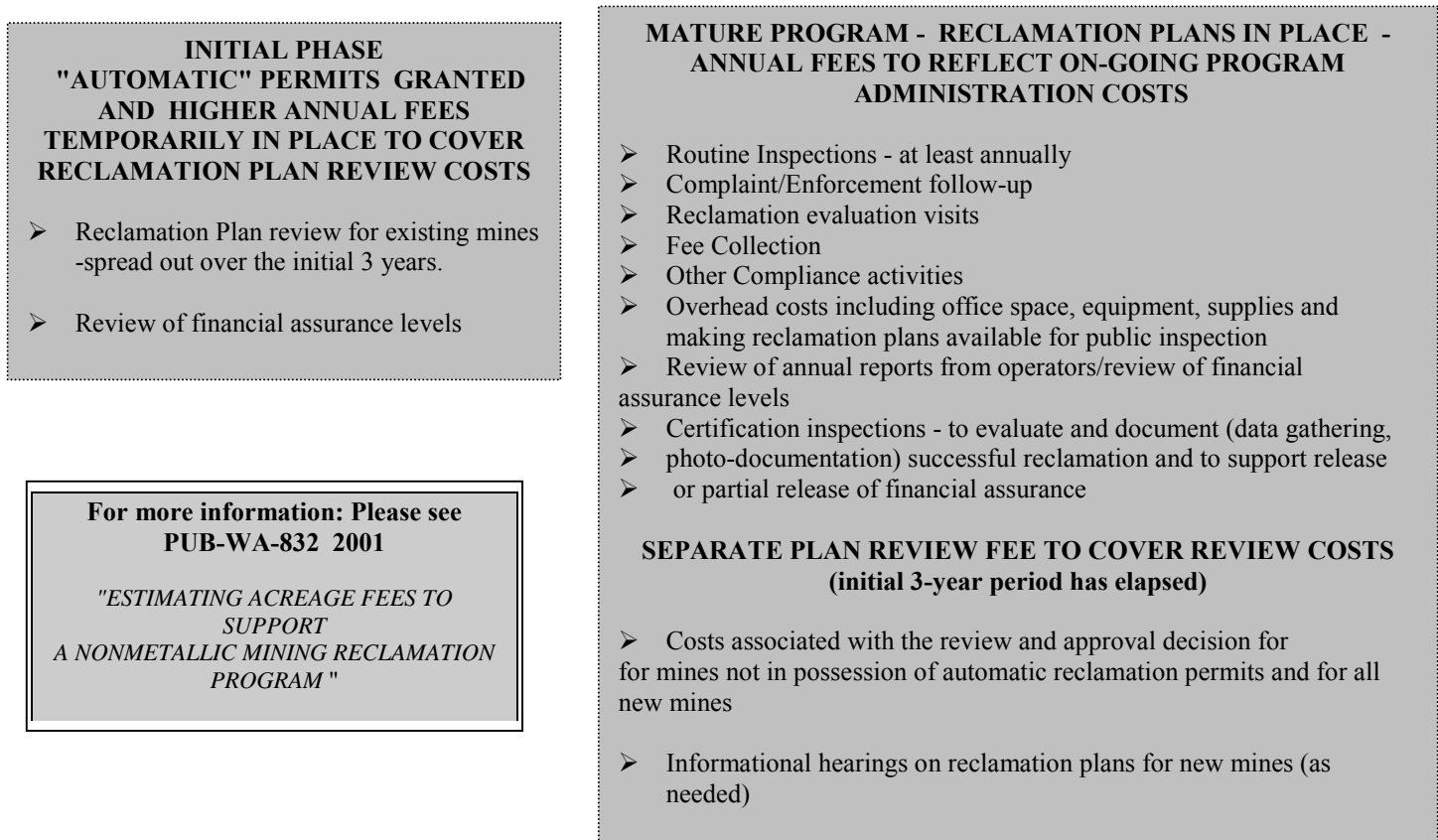
Today, we are nearing the goal of having reclamation plans approved by the County or Local Regulatory Authority (RA) and financial assurance in place for all active

nonmetallic mining operations. (See status article this issue) Once this goal is reached, the higher fees intended to spread out the cost of plan review for existing mines will be a thing of the past. Now is a good time for RAs to reexamine annual fees to ensure they reflect current program administration costs. Typical on-going program administration costs (please see Figure 1 below) include recordkeeping, fee collection, site inspections, and other reasonable costs and are generally similar to the approach in NR 135.39 (Table 3). Again, in the long-term, the annual fees should **not** include reclamation plan review costs. In addition, it is also a good time to evaluate the need to create a separate reclamation plan review fee for new applications, similar to that modeled in NR 135.39 (Table 4), to reflect those costs associated with plan review and approval.

It should be noted that the fee structure is often established in the county or local reclamation ordinance. Because many existing reclamation ordinances are already structured to reduce annual reclamation fees to exclude reclamation plans examination costs once such plans are reviewed and approved. Thus, for many jurisdictions, this change in annual fees will happen automatically.

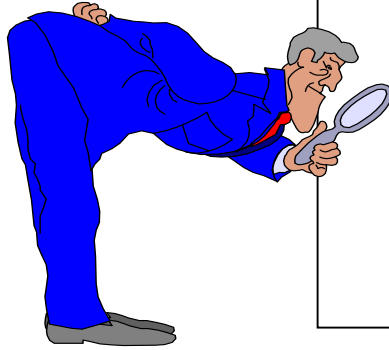
For the remainder of jurisdictions, this article is intended to serve as a reminder to revisit annual reclamation fees to ensure that they reflect current on-going administrative costs. In any event, it is recommended that all RAs reevaluate their costs and revenues in order to determine what changes, if any, to the annual fees are necessary and to initiate needed changes. For further information on estimating fees please consult the DNR publication *"ESTIMATING FEES TO SUPPORT A NONMETALLIC MINING RECLAMATION PROGRAM"* PUB-WA-832 2001.

**Figure 1. Comparison of Reclamation Plan Review Costs During (Initial) Implementation Phase of NR 135 Program v. Mature Program.**



### 3. [How to Prepare for a Nonmetallic Mining Reclamation Program Audit - Jessica Maloney](#)

The word “audit” is often associated with the IRS. As a consequence it evokes needless anxiety and other negative reactions.



We hope this article can lighten this up a bit and even go a ways toward transforming a negative association into an opportunity. This can happen if the audit - or program review - experience is seen as a learning tool and an opportunity to enhance **the reclamation program.**

There are several reasons DNR performs program review audits. First, audits are a statutory requirement that mandates DNR to ensure that reclamation programs are being administered in compliance with NR 135 and in an effective and consistent manner. Audits also give DNR the information necessary to ascertain if operator reclamation activities are carried out in compliance with the uniform statewide reclamation standards. *There are a number of things that can be looked at during a performance audit. Please see NR 135.47 (a) - (n). Not all items will be addressed in each performance audit.* The intent of the audit process is to both gather quality assurance information and to answer any program implementation questions you might have. The audit process offers an opportunity to take stock of things, address any implementation questions you may have and address problems you've encountered.

The purpose of this article is to assist you in preparing for an NR 135 Reclamation Program audit and to ensure that you get the most out of the audit process. Basically there are two main items the auditor will want to focus on, an 1) office review of paperwork and information gathering to assess the program and 2) site visits. When a DNR representative calls to schedule the time and date you will need to agree on the amount of time to allocate for the audit. Typically, auditors will set up a 2-4 hour time period for the office portion of the audit. Later, or perhaps on a separate day, the auditor will accompany you on a site inspection. There are a number of things that can be looked at during a performance audit. Please see NR 135.47 (a) - (n). Not all items will be addressed in each performance audit. That being the case it should be noted

#### **The "packet" will contain:**

► **Pre-audit questionnaire-** needs to be completed before the auditor arrives. Having this questionnaire completed as thoroughly as possible will greatly expedite the review process.

► **The auditor's checklist-** The checklist is the form that will be completed by the DNR during the audit and that guides the program review. The completed form becomes part of the record of the visit. It would be a good idea for you to become familiar with the checklist. We believe that having an advance copy of the checklist will help you prepare since it can serve as a guide to help you in getting all of the relevant documents together.

that the adjacent list is standard and is not an indication of the priorities or the items selected for a given unique audit. To ensure that you get the most out of the process, after scheduling but before the audit date look at and complete materials that the DNR will send you. We have found that this approach will both prepare you for the audit and to make the best use of our time and facilitates consistency in the audit process

Likewise, take the time to have other relevant documents ready ahead of time. This helps both parties get the most out of the time scheduled for the process. Among the documents the reviewer will be looking for: examples of complete and approved reclamation plans, financial assurance information for the approved reclamation plans, documentation of staff time spent on the program and fee collection information, example inspection reports, and any changes in the ordinance. Reviewers will want to see **example approved plans** in order to establish whether your program is on the right track in requiring at least the minimum standards set forth in NR 135. If your staff have done any inspections on the reclaimed portions of sites, the reviewer would be interested in discussing the **reclamation results and any decisions on the successful completion**, of reclamation (if any), compliance issues and, if applicable, release of financial assurance for that portion of the mine.

► **Financial review checklist**- this checklist will be used as a guide to help gather financial information on the accuracy and reasonableness of fees. We will look at the basic accounting of revenues vs. expenditures within this program. It is recommended that you use the financial checklist as a guide to what basic financial records and information should be available when you are preparing for the audit.

To make sure you get the most out of the process - take the time to come up with a list of questions staff may have had on their minds, and make note of any problems you may be having with the program.

Whether or not any reclamation has been brought to completion it is likely that the DNR auditor will want to go with you to visit some nonmetallic mine sites. These **on-site inspections** of mine sites are required by law. This could be your opportunity to take DNR to sites that may be having trouble with compliance, and/or to go to sites that are doing exceptionally well.

Finally, the DNR will write up a report of its findings and mail it to you within 90 days. If any problems were found during the audit, you will have an opportunity to correct them within a given time frame agreed to during or shortly after the audit.

In conclusion, DNR recognizes that each Regulatory authority (RAs) has their own set of complicating issues to deal with. However, since the uniform standards for mine reclamation are performance based such the differences can be accommodated by the flexibility inherent to NR 135 allowing the administration to be consistent with other areas of the state. Overall, the audit process is used as a tool for ensuring that the nonmetallic mining program is being administered as consistently as possible and that there is a predictable and fair process with known expectations anywhere in the state.



DNR's goal is to help you run an effective program that is in compliance with state law and in accord with common sense. So when you are selected for an audit please remember -this is not a line- the NR 135 staff are there to help you. Good and open communication from start to finish will ensure that audit findings will not come as a surprise. As always, you are encouraged to contact your local DNR nonmetallic mining representative if you have any questions or concerns about the audit process or any other reclamation program concern.

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